Hayek's Concept of Freedom: A Critique

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F. A. HAYEK, in his latest book, *The Constitution of Liberty* (University of Chicago Press, Chicago, 1960), attempts a thorough exposition of the theoretical and historical foundations of individual liberty. His main thesis is that freedom may be defined as the absence of coercion: it thus becomes clear that, in order fully to comprehend what he feels to be the basis of personal freedom in society, we must turn to his definition of coercion.

Professor Hayek states: "Coercion occurs when one man's actions are made to serve another man's will, not for his own but for the other's purpose." (p. 133.) But he goes on to make explicit that such coercion can occur only when the possibility of alternate actions is open to the coerced. "Coercion implies … that I still choose but that my mind is made someone else's tool, because the alternatives before me have been so manipulated that the conduct that the coercer wants me to choose becomes for me the least painful one." (p. 133.)

Let us examine this concept more thoroughly. Firstly, the absence of coercion, in terms of the above statement, would seem to be the following: Freedom (or the absence of coercion) obtains when the possible alternative actions before me are not such that, through the manipulation of such alternatives by another actor, the least painful choice for me is that which is the most beneficial for him. Or, more simply, freedom obtains when no one else manipulates my environment in such a way that my action (or actions) benefits him. It shall be my purpose, throughout the remainder of this article, to indicate that such a concept of freedom is fundamentally incompatible with the one which forms the basis of a consistent libertarianism.

Now, the first difficulty arising out of such a definition is that of determining just what particular actions are coercive. Professor Hayek attempts to distinguish coercive acts from "the conditions or terms on which our fellow men are willing to render us specific services or benefits," in the following way: "So long as the services of a particular person are not crucial to my existence or the preservation of what I most value, the conditions he exacts for rendering these services cannot properly be called 'coercion'." But it would seem that this lends little if any clarity to the distinction between coercive and non-coercive acts, since we are still left to define and make precise Hayek's qualifications for characterizing an action as a coercive one; namely, being "crucial to … existence" and "preserving what one most values."

Let us take an example which Hayek himself uses. Suppose that the condition for my being invited to a certain party, which I had previously indicated I wanted very much to attend,

were my wearing formal attire. Could it be said that my host, by demanding such an action on my part, was acting coercively towards me? It would appear, and so Hayek concludes, that the answer is clearly "no." For, although it is true that my environment is being deliberately manipulated in such a way that my "least painful choice" is that which benefits the manipulator, this situation does not satisfy the terms of either of the above qualifications: i.e., neither "being crucial to my existence" nor "preserving what I most value." Yet, perhaps we are drawing our drawing our conclusion too hastily. It might be that I am a very social-conscious person, and not being invited to this party would greatly endanger my social standing. Further, my tuxedo is at the cleaners and will not be ready for several days. I do not have time to order a new one, and I am assured by my tailors that the fitting and altering involved will take at least a week and the party is this Saturday. Under these conditions, could it be said that my host's action in demanding my wearing formal attire as the price of access to his home is, in fact, a coercive one, since it clearly threatens the preservation of one of the things I most value, my social prestige?

The above situation might be altered slightly to present what might more clearly appear to be a coercive act, in terms of Hayek's definition. Suppose the price demanded by my host, in return for inviting me to his home, were a commitment from me that I wash all the silver and china used at the party. On the face of it this would seem to be nothing more than a contract relationship voluntarily entered into by the two parties to the agreement. But suppose all the other conditions concerning my attachment to social prestige still held. It then becomes the case, within the framework of Professor Hayek's terms, that such a contract is of a coercive nature.

On p. 136, he presents a case of "true coercion" of this same type. "A monopolist could exercise true coercion … if he were … the owner of a spring in an oasis. Let us say that other persons settled there on the presumption that water would always be available at a reasonable price and then found … that they had no choice but to do whatever the owner of the spring demanded of them if they were to survive: here would be a clear case of coercion." We assume that Hayek means that a contract entered into by the owner of the spring and the purchaser of water which allowed for renumeration to the spring-owner of any but a "reasonable price" would be of a coercive nature. But here we are faced with a difficult problem; namely, what constitutes "a reasonable price." By "reasonable," Professor Hayek might mean "competitive." But how is it possible to determine what the competitive price is in the absence of competition? Economics cannot attribute a cardinal magnitude to any price outside of the framework of the market. What, then, can we assume to be a "reasonable" price, or, more to the point, at what price does the contract alter its nature and become a coercive one? Is it at one dollar a gallon, ten dollars a gallon, one thousand dollars a gallon? What if the owner of the spring demands nothing more than the friendship of the settlers. Is such a price coercive? By what principle can we decide when the agreement is a simple contractual one, and when it is not?

But we must face yet a further difficulty. Is the owner acting coercively if he refuses to sell his water at any price? Let us suppose that he looks upon his spring as sacred to his gods and to offer up its holy water a gross sacrilege. Here is a situation which would not fall under Hayek's definition of coercion, since the owner of the spring forces no action on the settlers. Yet, it would appear that, within Hayek's own framework, this is a far worse situation, since the only "choice" left open to the settlers now is dying of thirst.

LET US NOW turn to Professor Hayek's use of the term "coercion" within the context of state activity. Here, just as many difficulties seem to arise. On p. 153, he states that "the conception of freedom under the law that is the chief concern of this book rests on the contention that when we obey laws, in the sense of general abstract rules laid down irrespective of their application to us, we are not subject to another man's will and are therefore free." The inference is, of course, that these abstract rules, when applied impartially without regard to person are non-coercive, despite any qualification as to their content. And Hayek himself says this: though "taxation and the various compulsory services, especially conscription … are not supposed to be avoidable, they are at least predictable and are enforced irrespective of how the individual would otherwise employ his energies: *this deprives them largely of the evil nature of coercion.*" (Italics mine).

Now, in a book dedicated to an investigation of the theoretical and historical groundwork of freedom, particularly within the context of a state structure, it is of the utmost importance that the boundary between coercion and non-coercion, as applied to the actions of the state, be clearly drawn. For how else are we to know when the state is exercising its legitimate functions or coercing its citizens? Hayek differentiates these two categories of actions by applying the concept of the Rule of Law. "Law," Professor Hayek asserts on p. 149, "in its ideal form might be described as a 'once-and-for-all' command that is directed to unknown people and that is abstracted from all particular circumstances of time and place and refers only to such conditions as may occur anywhere and at any time." We see, then, that the Rule of Law is the governance of society under a set of abstract rules which in no way discriminate among the citizenry and, hence, are equally applicable to all. An instance of such a law would be taxation (although *not* progressive taxation[1]) which applies equally to all those falling under the jurisdiction of the state. Having thus been robbed of either privilege or discrimination as regards "the classification of persons which the law must employ," such state action does not fall under the scope of coercion.

But we are forced to question the validity of this conclusion which rests on what is, in fact, a mistaken distinction between legitimate and illegitimate state actions. It would, for example, be perfectly consistent with the Rule of Law, as Professor Hayek presents it, to allow for the passage of legislation prescribing the enslavement of each male citizen for a period of two years, such enslavement to fall during the period of his prime (say, between the ages of 18 and 36). This is, in fact, the case with conscription, which Hayek explicitly states is consonant with a free society. Such a conclusion differs radically from that once made by Mr. William F.

Buckley, Jr., that "conscription is the most naked form which tyranny assumes in our society today," and appears to be inconsistent with Hayek's own intention of laying down those principles which allow for a minimum of coercion in society.

Further, it would be just as consistent, within a free society governed by the Rule of Law, to interfere with many of our most basic freedoms—and such freedoms include economic ones as well[2] —provided such laws are applicable to all without distinction.

It is one of Hayek's purposes to build up a theoretical framework from which the necessity of private property can be deduced, a conclusion arrived at from an investigation of the nature of power and freedom in society. It would clearly seem to be subverting the very groundwork of such a principle if the theoretical system upon which it rests allows for the concentration and legitimate use of such powers in the hands of the state which can result in a system the nature of which aims at the overthrow of personal liberty. Hayek says: "the recognition of private property is … an essential condition for the prevention of coercion." Yet he succeeds in placing within the power of the state the very means of interfering with that right under the guise of acting consistently within the borders of its legitimate domain and consonant with the Rule of Law. Here, then, lies the main critique of Hayek's proposed framework: that it offers a rationale for what clearly are coercive acts of the state, e.g., conscription, interference in the economy (under the principle that it is attempting to minimize personal coercion) and alteration by flat of the social structure of personal relationships which have developed spontaneously and undirected over the course of centuries.

Given that such situations as the voluntary contractualization of parties to a mutually beneficial agreement (e.g., the example cited above concerning the spring in the desert) can be classed under the heading of "coercion" within Hayek's system, and that what appear to be clear cases of coercive governmental action, such as conscription, are deemed legitimate and in accordance with the Rule of Law, it would seem that Hayek's position on the nature of coercion and freedom must, as it stands, be rejected.

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1. Cf. Hayek's discussion of progressive taxation on p. 314.

2. We are here dealing only with political, and not economic arguments. It could easily be shown that restrictions on trade and manufacture were highly detrimental to society in that they would necessarily lower the standard of living and the comfort and well-being of the citizens. But such arguments would be economic ones, and only economic ones, since we would have no recourse to political discussion except outside the terms of Professor Hayek's position. Once the Rule of Law is taken as a basis of legitimate state action, and all laws equally applicable to all fall under this rubric, we can no longer bring to bear a discussion of the state's interference with personal freedom.